

Senate Bill No. 528

Passed the Senate August 30, 2007

Secretary of the Senate

Passed the Assembly August 27, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1363.05 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 528, Aanestad. Common interest developments: open meetings.

Existing law requires that a common interest development be managed by an association. The Common Interest Development Open Meeting Act provides that any member of the governing association of a common interest development may attend meetings of the board of directors of the association, except as specified. The act also requires that notice of the time and place of a meeting be given to members at least 4 days prior to the meeting, except in the case of an emergency meeting, as described.

This bill would require the above notice to contain the agenda for the meeting. It would prohibit the board of directors from discussing or taking action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice. The bill would provide that these provisions do not prohibit a resident who is not a member of the board from speaking on issues not on the agenda. The bill would also permit the board of directors, an agent of the board, or a member of the board's staff, to briefly respond to statements made or questions posed by a person speaking at a meeting, ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, as specified. The bill would further permit the board of directors or a member of the board of directors, subject to rules or procedures of the board of directors, to provide a reference or factual information to its managing agent or other agents or staff, request its managing agent or other agents or staff to report back to the board of directors at a subsequent meeting or to place a matter of business on a future agenda, or direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out these provisions. This bill would also permit the board of directors to take action on any item of business not appearing on the agenda posted and distributed if (1) a majority of the board

of directors present at the meeting determines that an emergency situation exists, (2) the board determines, by a specified vote, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was posted and distributed, or (3) the item appeared on an agenda that was posted and distributed for a prior meeting that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken. The bill would require the board, before discussing any item pursuant to these provisions, to openly identify the item to the members in attendance at the meeting. The bill would make technical changes.

The people of the State of California do enact as follows:

SECTION 1. Section 1363.05 of the Civil Code is amended to read:

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 1367 or 1367.1. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon

request and upon reimbursement of the association's costs for making that distribution.

(e) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) Unless the time and place of meeting is fixed by the bylaws, or unless the bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (j), except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, by mail or delivery of the notice to each unit in the development or by newsletter or similar means of communication. The notice shall contain the agenda for the meeting.

(g) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(h) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or before a meeting of the association shall be established by the board of directors.

(i) (1) Except as described in paragraphs (2) to (4), inclusive, the board of directors of the association may not discuss or take action on any item at a nonemergency meeting unless the item was placed on the agenda included in the notice that was posted and distributed pursuant to subdivision (f). This subdivision does not

prohibit a resident who is not a member of the board from speaking on issues not on the agenda.

(2) Notwithstanding paragraph (1), a member of the board of directors, a managing agent or other agent of the board of directors, or a member of the staff of the board of directors, may do any of the following:

(A) Briefly respond to statements made or questions posed by a person speaking at a meeting as described in subdivision (h).

(B) Ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities, whether in response to questions posed by a member of the association or based upon his or her own initiative.

(3) Notwithstanding paragraph (1), the board of directors or a member of the board of directors, subject to rules or procedures of the board of directors, may do any of the following:

(A) Provide a reference to, or provide other resources for factual information to, its managing agent or other agents or staff.

(B) Request its managing agent or other agents or staff to report back to the board of directors at a subsequent meeting concerning any matter, or take action to direct its managing agent or other agents or staff to place a matter of business on a future agenda.

(C) Direct its managing agent or other agents or staff to perform administrative tasks that are necessary to carry out this subdivision.

(4) (A) Notwithstanding paragraph (1), the board of directors may take action on any item of business not appearing on the agenda posted and distributed pursuant to subdivision (f) under any of the following conditions:

(i) Upon a determination made by a majority of the board of directors present at the meeting that an emergency situation exists. An emergency situation exists if there are circumstances that could not have been reasonably foreseen by the board, that require immediate attention and possible action by the board, and that, of necessity, make it impracticable to provide notice.

(ii) Upon a determination made by the board by a vote of two-thirds of the members present at the meeting, or, if less than two-thirds of total membership of the board is present at the meeting, by a unanimous vote of the members present, that there is a need to take immediate action and that the need for action came to the attention of the board after the agenda was posted and distributed pursuant to subdivision (f).

(iii) The item appeared on an agenda that was posted and distributed pursuant to subdivision (f) for a prior meeting of the board of directors that occurred not more than 30 calendar days before the date that action is taken on the item and, at the prior meeting, action on the item was continued to the meeting at which the action is taken.

(B) Before discussing any item pursuant to this paragraph, the board of directors shall openly identify the item to the members in attendance at the meeting.

(j) As used in this section, “meeting” includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

Approved _____, 2007

Governor